

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338 E) and the CITY OF CERRITOS for Authority to Implement AB 80 Pursuant to Agreement.

Application 04-08-019
(Filed August 13, 2004)

**ORDER GRANTING APPLICATION OF SOUTHERN CALIFORNIA
EDISON COMPANY AND THE CITY OF CERRITOS FOR
AUTHORITY TO IMPLEMENT AB 80**

1. Summary

This order grants the application of Southern California Edison Company (SCE) and the City of Cerritos (Cerritos) by authorizing their joint proposal to implement Assembly Bill (AB) 80 pursuant to their agreement. The agreement provides the conditions under which the City may act as a community aggregator on behalf of retail end-use customers within its jurisdiction following construction of the Magnolia Power Project (Project) in the City of Burbank.

2. Background

The Governor signed AB 80 on September 24, 2002, adding Section 366.1 to the Public Utilities Code. AB 80 provides that a city with rights and obligations to the Magnolia Power Project may serve as a community aggregator on behalf of customers within its jurisdiction if the Project has been constructed and is otherwise capable of delivering electricity to existing project participants. The Project is a natural gas electricity generating facility located in Burbank, California and is currently under construction pursuant to a certificate granted by the California Energy Commission in Order No. 02-0305-03. AB 80 defines

“existing project participant” as a city with rights and obligations to the Project under an agreement dated May 1, 2001. Cerritos has status as an existing project participant and anticipates the project will begin delivering power on or about May 1, 2005.

Cerritos now wishes to involve AB 80 by becoming a community aggregator. Although SCE and Cerritos agree that AB 80 provides the city with certain rights and obligations, they have differed on the bill’s intent. They reached an agreement resolving this dispute, which is described below and for which the subject application seeks approval.

No party filed an objection to this application. The Commission did not conduct hearings in this proceeding and issues this order ex parte.

3. The Agreement Between SCE and Cerritos

Cerritos and SCE seek approval of an agreement that would permit the implementation of AB 80 and resolve outstanding disputes they have regarding the intent and requirements of AB 80. Their dispute concerns the obligations of Cerritos with regard to the nature and extent of services it must provide to customers within its jurisdiction. Specifically, SCE has interpreted AB 80 to require that if Cerritos were to become a community aggregator under the terms of AB 80, it would have to serve all customers in its jurisdiction except those that choose to opt out of such service. Conversely, Cerritos has interpreted AB 80 to permit it to offer service to customers in its jurisdiction who would affirmatively choose service from the city and to permit the city to have discretion as to which customers it would serve. SCE and Cerritos have resolved this dispute by agreeing that Cerritos may offer service to customers who opt-in for such service and at the city’s discretion provided that Cerritos limits the load of customers served to its generation entitlement share of 13.02 megawatts. This limit may be

increased in the event Cerritos is required to participate in the renewable portfolio standard program. The increased amount would be equal to the amount of renewable generation Cerritos is obligated to acquire under the program.

AB 80 requires that for its provisions to become operative, the Commission must implement a cost recovery mechanism applicable to customers electing to purchase electricity from Cerritos. The costs which are the subject of this requirement are those incurred by Department of Water Resources (DWR) and SCE for power purchases originally intended to serve those SCE customers that would be served by Cerritos when it begins power deliveries as a community aggregator. The agreement between Cerritos and SCE would resolve this requirement by providing that Cerritos will pay the “cost responsibility surcharge” (CRS) applicable to direct access customers until the Commission adopts a CRS required by Section 366.1(c)(l) and 366.1(d) pursuant to AB 117, which governs the implementation of the community choice aggregation (CCA) program by the Commission.

The agreement also provides that Cerritos will be subject to the transaction costs and operating rules applicable to energy service providers and direct access customers under existing tariffs.

The agreement is attached to this order as Appendix A.

4. Discussion

Section 366.1, enacted by AB 80, permits a local jurisdictions to provide retail service to local residents and businesses as a “community aggregator” if it has rights to the power from the Magnolia Power Project located in Burbank, California. According to the subject application, Cerritos qualifies for status as community aggregator under the terms of AB 80.

Section 366.1(d) requires that the Commission approve a cost-recovery mechanism for a proportionate share of liabilities associated with certain power purchase contracts entered into by the state's Department of Water Resources and the utility. Such a cost-recovery mechanism has been adopted by the Commission for direct access customers and is under consideration in R.03-10-003 for "community choice aggregators" pursuant to Section 366.2, enacted by AB 117. In related dockets, we have referred to such a cost-recovery mechanism as the "cost responsibility surcharge" or CRS. The agreement proposed by Cerritos would apply the CRS now imposed on direct access customers until the Commission has adopted a CRS for CCAs, as required by Section 366.2. That CRS is adopted for CCAs would apply to Cerritos under the terms of its agreement with SCE. In the interim, the direct access CRS would not be capped for Cerritos, as it is for direct access customers. The parties' agreement provides that the amount would be trued-up in a subsequent period. These provisions for the cost-recovery mechanism satisfy the requirements of AB 80, which would take effect only after the Commission reports to the Legislature that it has adopted a cost-recovery mechanism. We will direct the Executive Director to submit this order in fulfillment of that requirement.

The subject application describes a dispute between SCE and Cerritos with regard to the statute's intent. SCE on the one hand believes AB 80 restricts Cerritos' discretion with regard to whether it may serve only a portion of its local residents and businesses and whether service to them is affected when they choose to take service ("opt in") or when they fail to decline service ("opt out"). SCE believes the statute intends the same requirements applicable to CCAs under AB 117: service to all customers except those who opt-out. Cerritos believes it has discretion to decide which customers it will serve just as an energy

service provider has discretion to choose direct access customers. The parties resolved this dispute by providing Cerritos with discretion up to the amount of power from the Magnolia Power Project to which Cerritos is entitled.

We agree generally with the way the agreement resolves this dispute but clarify our interpretation of the statute. Nothing in the statute suggests Cerritos should be subject to the service restrictions of a CCA, as SCE has argued. We so conclude for several reasons. AB 80 does not use the terminology applied to cities and counties in AB 117: AB 80 refers to “community aggregators” and AB 117 refers to “community choice aggregators.” We must assume that if the Legislature intended us to treat AB 80 entities as CCAs, it would have so stated and referred to those entities as CCAs. With regard to the service rights and obligations of qualified entities, AB 80 only states that “an existing project participant may serve as a community aggregator on behalf of all retail end-use customers in its jurisdiction.” It does not further define the rights or obligations of qualified community aggregators. In contrast AB 117 specifies a number of obligations and service restrictions for CCAs. Because AB 80 neither defines community aggregators’ rights and obligations with specificity nor refers to the code sections applicable to CCAs, we can only assume the statute permits the community aggregator wide latitude in how it serves retail customers in its jurisdiction. The agreement between SCE and Cerritos appears to recognize the discretion accorded to Cerritos and we therefore do not take issue with it. We also agree that the limitation based on Cerritos’ entitlement to Magnolia Power Project’s output is consistent with AB 80 because of the statute’s apparent intent to permit aggregation to the extent of available resources from the Magnolia Power Project. If Cerritos wishes to serve additional load, it would need to comply with the requirements for CCAs as set forth in Section 366.2.

Other elements of the agreement are either consistent with the statute, do not conflict with the statute or are required in order to implement the statute as it applies to Cerritos in this instance.

We herein approve the agreement proposed by SCE and Cerritos.

5. Comment on Draft Decision

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

6. Categorization and Need for Hearings

In Resolution ALJ 176-3138 dated September 2, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3138.

7. Assignment on Proceeding

Geoffrey Brown is the Assigned Commissioner and Kim Malcolm is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. AB 80 permits entities with entitlements to power from the Magnolia Power Project to act as “community aggregators” and thereby provide retail electricity service to customers within each entity’s jurisdiction. Prior to providing service, the Commission must adopt a mechanism that would permit the recovery of certain utility and DWR power costs from community aggregator customers and must report to the Legislature that it has adopted such a mechanism.

2. Cerritos is entitled to a share of the output from the Magnolia Power Project and qualifies to act as a community aggregator as defined by AB 80.

3. The agreement between Cerritos and SCE would implement the provisions of AB 80 as it affects Cerritos.

Conclusions of Law

1. AB 80 does not restrict the way Cerritos may offer retail service to customers within its jurisdiction.

2. The agreement between Cerritos and SCE which is subject to this order is consistent with AB 80, does not conflict with AB 80 and reasonably implements the provisions of AB 80.

3. The agreement between Cerritos and SCE should be approved and its provisions should become effective after the Commission provides the report to the Legislature required in Section 366.1(c)(2).

O R D E R

IT IS ORDERED that:

1. The agreement between the City of Cerritos and Southern California Edison Company (SCE) which is the subject of this application is approved to the extent set forth herein.

2. In order to satisfy Section 366.1(c)(2) of the California Public Utilities Code and in order to affect the agreement that is the subject of this order, the Executive Director shall submit to the Senate Energy, Utilities and Communications Committee and the Assembly Committee on Utilities and Commerce of the California State Legislature a copy of this order and a cover letter explaining the Commission's implementation of a cost-recovery mechanism as required by Section 366.1(d).

3. SCE shall comply with all elements of the agreement approved by this order with regard to cost-recovery mechanisms and transactions costs.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

[A0408019 APPENDIX A TO KIM](#)